

Message Text

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ACTION STR-07

INFO OCT-01 IO-13 ISO-00 STRE-00 EUR-12 CEA-01 CIAE-00
COME-00 DODE-00 EB-08 FRB-03 H-01 INR-10 INT-05
L-03 LAB-04 NSAE-00 NSC-05 PA-01 CTME-00 AID-05
SS-15 ITC-01 TRSE-00 ICA-11 SP-02 SOE-02 OMB-01
DOE-15 AGR-05 DOEE-00 SSO-00 /131 W
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FM USMISSION GENEVA
TO SECSTATE WASHDC PRIORITY 1010
INFO AMEMBASSY OTTAWA

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USMTN

ACTION STR FOR MATTHEISEN AND STARKEY

STR PASS CODEL

E.O. 11652
TAGS: ETRD, MTN, CA
SUBJECT: SAFEGUARDS: POSSIBLE HANDLING OF U.S.-CANADA
HORTICULTURE PROBLEMS IN SAFEGUARDS CODE

REF: 77 GENEVA 4143

1. CANADIAN MTN DEL HAS FURNISHED US AN INFORMAL DRAFT
(NOT CLEARED IN OTTAWA) OF A POSSIBLE PROTOCOL TO SAFE-
GUARDS CODE FOR HANDLING WELL KNOWN CANADIAN CONCERN OVER
SHORT TERM SAFEGUARD ACTIONS ON HORTICULTURAL PRODUCTS.
CANADIAN DEL UNCERTAIN WHETHER THEY CAN SELL THIS APPROACH
TO OTTAWA BUT SEE IT AS WAY OF DEFUSING PRESSURE TO
IMPLEMENT TARIFF BOARD RECOMMENDATIONS FOR AUTOMATIC
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SURTAX MECHANISM ON FRESH AND PROCESSED FRUIT/VEGETABLE
IMPORTS.

2. TEXT OF DRAFT PROTOCOL (GIVEN BELOW) BRINGS TOGETHER
THREE MAIN STRANDS OF CANADIAN CONCERN: (A) LEGITIMACY
OF RAPID ACTION TO DEAL WITH THREAT OF "DISTRESS-PRICED"
IMPORTS FROM U.S. WHICH CAN HAVE SEVERE PRICE-DEPRESSING

EFFECTS IN CANADIAN MARKETS EVEN BEFORE TRADE HAS ACTUALLY FLOWED; (B) RETAINING OR IMPROVING CONSULTATIVE PROVISIONS ALONG THE LINES OF THE RENNER-TOWE 1970 EXCHANGE OF LETTERS ON U.S.-CANADA EMERGENCY ACTIONS ON CERTAIN HORTICULTURAL AND POULTRY PRODUCTS; AND (C) PINNING DOWN AGREEMENT TO CANADIAN DOCTRINE THAT LEGITIMATE SAFEGUARD ACTIONS SHOULD NOT SUFFER RETALIATION, BUT IF THEY CAUSE TRADE DAMAGE TO EXPORTER, WARRANT PAYMENT OF COMPENSATION. DRAFT PROTOCOL MAY GO THROUGH FURTHER REVISIONS, DEPENDING ON OTTAWA REACTION. CANADIAN DEL STRESSES THAT FORM IS NOT SACROSANCT, I.E., IT COULD ALSO BE A TRILATERAL U.S.-CANADA-MEXICO AGREEMENT--AS LONG AS IT RESOLVES ANY INCONSISTENCIES BETWEEN NEW SAFEGUARDS CODE AND HANDLING OF SPECIAL CANADIAN PROBLEMS, WHILE ENABLING CANADIAN GOVERNMENT TO PRESENT RESULTS AS AN APPROPRIATE ALTERNATIVE RESPONSE TO TARIFF BOARD RECOMMENDATIONS FOR THE AUTOMATIC SURTAX APPROACH.

3. TEXT OF DRAFT PROTOCOL FOLLOWS: QUOTE

- PROTOCOL

THE SIGNATORIES TO THIS AGREEMENT NOTE THAT FROM TIME TO TIME THERE HAVE ARISEN SITUATIONS IN WHICH SERIOUS INJURY IN THE SENSE OF ARTICLE XIX HAS BEEN CAUSED OR THREATENED TO CANADIAN PRODUCERS OF CERTAIN FRESH (AND PROCESSED) LIMITED OFFICIAL USE

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FRUITS AND VEGETABLES BY IMPORTS, OR THE THREAT OF IMPORTS, AT UNUSUALLY LOW PRICES. THE SIGNATORIES ARE AWARE THAT IN CERTAIN OF THESE SITUATIONS THE CANADIAN AUTHORITIES HAVE APPLIED TEMPORARY MEASURES UNDER ARTICLE XIX TO PREVENT SUCH SERIOUS INJURY TO THEIR PRODUCERS. THE SIGNATORIES RECOGNIZE THAT IN THESE SITUATIONS THE CRITERIA FOR TAKING THE ACTION PROVIDED FOR IN PARAGRAPH ONE OF ARTICLE XIX MAY HAVE BEEN MET EXCEPT THAT THERE HAVE BEEN NO "INCREASED IMPORTS" IN THE SENSE OF THAT ARTICLE; IT HAS BEEN DEMONSTRATED, HOWEVER, THAT THERE WOULD BE SHARPLY INCREASED IMPORTS AT UNUSUALLY LOW PRICES UNLESS CANADIAN PRODUCERS LOWERED THEIR PRICES TO MATCH THE UNUSUALLY LOW PRICES OF POTENTIAL IMPORTS.

ACCORDINGLY IT IS AGREED THAT WITH RESPECT TO (LIST OF PRODUCTS) THIS AGREEMENT WILL APPLY SUBJECT TO THE FOLLOWING ADDITIONAL PROVISIONS:

A) IF CANADA TAKES ACTION UNDER THIS AGREEMENT FOR ONE OR MORE OF THE PRODUCTS REFERRED TO IN THIS PROTOCOL WHEN NO INCREASE IN IMPORTS HAS YET

OCCURRED BUT IT CAN BE DEMONSTRATED THAT POTENTIAL
IMPORTS ARE AVAILABLE IN INCREASED QUANTITIES AND
AT UNUSUALLY LOW PRICES, AND THE OTHER CRITERIA
REFERRED TO IN PARAGRAPH ONE OF ARTICLE XIX HAVE
BEEN FOUND TO HAVE BEEN MET, THEN CANADA WILL BE
DEEMED TO HAVE MET THE REQUIREMENTS OF THIS
AGREEMENT FOR TAKING ACTION UNDER XIX.

B) BECAUSE OF THE SPECIAL CHARACTERISTICS OF
THE TRADE IN THESE PRODUCTS THERE IS OFTEN A
NEED TO ACT QUICKLY TO PREVENT SERIOUS INJURY.
ACCORDINGLY IT IS AGREED THAT THE FOLLOWING CON-
SULTATION PROCEDURES WILL BE USED BY CANADA
(, EXCEPT IN A SITUATION OF CRITICAL CIRCUMSTANCES
IN THE SENSE OF PARAGRAPH TWO OF ARTICLE XIX). IF
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INFO OCT-01 EUR-12 IO-13 ISO-00 STRE-00 CEA-01 CIAE-00
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ACTION STR FOR MATTHEISEN AND STARKEY
STR PASS CODEL

THE CANADIAN GOVERNMENT INTENDS TO TAKE ACTION

PURSUANT TO THIS PROTOCOL IT SHALL NOTIFY THOSE CONTRACTING PARTIES HAVING A SUBSTANTIAL INTEREST AS EXPORTERS OF THE PRODUCT CONCERNED AND THE CONTRACTING PARTIES. THE NOTIFICATION SHALL CONTAIN A STATEMENT SETTING FORTH THE CASE FOR EMERGENCY ACTION. IF THE GOVERNMENT OF A COUNTRY, HAVING A SUBSTANTIAL EXPORT INTEREST IN THE PRODUCT CONCERNED, WISHES TO CONSULT WITH THE GOVERNMENT OF CANADA ON SUCH A STATEMENT, IT WILL DO SO WITHIN TWO WORKING DAYS. WHEN AND IF THE VIEWS OF AN EXPORTING COUNTRY HAVING A SUBSTANTIAL INTEREST HAVE BEEN RECEIVED, THE CANADIAN GOVERNMENT WILL DECIDE WHETHER OR NOT TO IMPLEMENT THE PROPOSED EMERGENCY ACTION. (NOTE: THIS SECTION REGARDING CONSULTATION MIGHT NEED ALTERATION IN LIMITED OFFICIAL USE

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THE LIGHT OF THE PROVISIONS AGREED IN THE SAFEGUARD AGREEMENT. THE PROVISIONS IN THIS SECTION WOULD BE DESIGNED TO PUT CANADA ON THE "3:A" TRACK WHEN ACTION WAS TAKEN.)

C) THE CANADIAN OBLIGATIONS UNDER THIS AGREEMENT REGARDING DOMESTIC PROCEDURES ARE DEEMED TO HAVE BEEN FULFILLED BY THE INQUIRY OF THE TARIFF BOARD OF CANADA REPORTED IN "(TITLE)", REFERENCE NO. 152.

D))HE SIGNATORIES TAKE NOTE OF THE STATEMENT OF THE CANADIAN AUTHORITIES THAT, IN THE LIGHT OF THIS TARIFF BOARD REPORT, THERE IS A PRESUMPTION THAT WHEN THE FOB IMPORT PRICE OF ANY OF THESE PRODUCTS FALLS BELOW X PER CENT OF THE AVERAGE MONTHLY IMPORT PRICE IN THE PRECEDING THREE YEARS, SERIOUS INJURY TO CANADIAN PRODUCERS WOULD RESULT IF SIGNIFICANT QUANTITIES OF SUCH A PRODUCT WERE IMPORTED AT SUCH PRICES. ACCORDINGLY THE CANADIAN AUTHORITIES WOULD CONSIDER APPLYING, IN SUCH SITUATIONS, A SURTAX ON SUCH IMPORTS TO RAISE THEIR PRICE TO THAT LEVEL. THE SIGNATORIES AGREE THAT UNLESS THE EXPORTING COUNTRY CAN DEMONSTRATE THE CONTRARY, SUCH A MEASURE WILL BE PRESUMED NOT TO CAUSE ANY DAMAGE TO THE TRADE INTERESTS OF THE EXPORTING COUNTRY AND THAT IT WOULD NOT BE DEEMED TO BE EXCESSIVE IN RELATION TO THE SERIOUS INJURY THREATENED. UNQUOTE.

3. DRAFTED BY HARTZELL. CULBERT

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